U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: SAN FRANCISCO, CA Date: SEP 29 2000

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. 1182(i)

Public Copy

IN BEHALF OF APPLICANT:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The waiver application was denied by the District Director, San Francisco, CA, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The application will be declared unnecessary, and all action on it will be terminated.

The applicant is a native and citizen of the Philippines who was initially admitted to the United States as a visitor for pleasure in 1987. He married his wife, also a citizen of the Philippines at the time, in 1993. In 1998, his wife naturalized as a United States citizen and filed an immediate relative visa petition on behalf of the applicant. The applicant appeared for interview to adjust his status to that of lawful permanent resident, and it was determined at the interview that he had fraudulently applied for benefits under the Amnesty program. The applicant was found to be inadmissible to the United States under § 212(a)(6)(C)(i) of the Immigration and Nationality Act, (the Act), 8 U.S.C. 1182(a)(6)(C)(i), for having attempted to obtain a benefit by fraud or willful misrepresentation. The applicant seeks the above waiver in order to remain in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel argues that the Service erred in determining that the applicant requires a waiver of inadmissibility under § 212(a)(6)(C)(i) of the Act. Counsel states that under § 245A(c)(5)(A)(i), the Service may not use information furnished by an applicant in an amnesty application other than to make a determination on that application. Counsel also discusses the requirement that for an applicant to be found inadmissible for fraudulent statements or misrepresentations, such must be made knowingly and willfully.

Section 245A(c)(5) of the Act, 8 U.S.C. 1255a(c), provides that:

> CONFIDENTIALITY OF INFORMATION.-
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> (A) IN GENERAL.-Except as provided in this paragraph, neither the Attorney General, nor any other official or employee of the Department of Justice, or bureau or agency thereof, may-
>
> (i) use the information furnished by the applicant pursuant to an application filed under this section for any purpose other than to make a determination on the application, for enforcement of paragraph (6), or for the preparation of reports to Congress under § 404 of the Immigration Reform and Control Act of 1986;

[redacted]

(ii) make any publication whereby the information furnished by any particular applicant can be identified; or

(iii) permit anyone other than the sworn officers and employees of the Department or bureau or agency or, with respect to applications filed with a designated entity, that designated entity, to examine individual applications.

According to counsel, the applicant did not commit a fraudulent act in applying for the Amnesty program. Counsel states that the applicant did not understand that he was applying for amnesty and that he did not have the requisite knowledge and intent to commit fraud. Documentation or evidence concerning the applicant's amnesty application is not present in the record of proceeding. However, the district director makes reference to such an occurrence in his decision.

Since the Service is statutorily precluded from using the information regarding fraud perpetrated in proceedings under § 245A(c)(5) of the Act, except for that specific application, the district director's decision will be withdrawn, as no other fraud has been established. The application will be declared unnecessary and moot, and all action on it will be terminated.

ORDER: The appeal is sustained. The application is declared unnecessary, and all action on it is terminated.